Secrets of Medicaid Qualifications

Compliments of:

Morton Law Firm, PLLC

(601) 925-9797

www.mortonelderlaw.com

Division of Assets and Medicaid Planning

How to Pay for the Nursing Home Without Going Broke

One of the things that concerns people most about nursing home care is how to pay for that care.

There are basically three ways you can pay the cost of a nursing home:

- **Long Term Care Insurance—**If you are fortunate enough to have this type of coverage, it may go a long way toward paying the cost of the nursing home. Unfortunately, this coverage has only started to become popular in the last couple of years and most people facing a nursing home stay do not have it.
- **Pay with Your Own Funds—**This is the method many people choose at first. Simply, it means paying out of your own pocket. Unfortunately, with nursing home bills averaging around $4,000 to $4,500 per month in our area, few people can afford a long term stay in a nursing home.
- **Medicaid—**This is a primarily federally-funded and state-administered program which pays for the cost of the nursing home if certain asset and income tests are met.

Since the first two methods, (long term care insurance and paying with your own funds) are self-explanatory, we'll concentrate on Medicaid and Medicare and on the process known as division of assets.

What About Medicare?

There is a great deal of confusion about Medi*care* and Medi*caid*.

Medicare is the federally-funded health insurance program primarily designed for older individuals (i.e., those over age 65). There is a limited long term care component to Medicare. In general, if you've had a hospital stay of at least three days, and then you need to go into a skilled nursing facility (often for rehabilitation), then Medicare may pay for a while. Typically, in that circumstance, Medicare will pay the full cost of the nursing home stay for the first 20 days and will continue to pay the cost of the nursing home stay for the next 80 days, but with a deductible that's nearly $120 per day. Often times your Medicare supplement will pay the cost of that deductible. So in the best case scenario, Medicare may pay up to 100 days. In order to qualify for this 100 days of coverage, however, the nursing home resident generally must continue to "improve." While it's never possible to predict at the outset how long Medicare will cover the rehabilitation, from our experience it often falls far short of the 100 day standard. But even if Medicare does cover the 100 day period, what then? What happens after the 100 days of coverage have been used?

At that point, you're back to one of the other alternatives… long term care insurance, or paying the bills with your own assets, or Medicaid.

What is Medicaid?

Medicaid is a benefits program which is primarily funded by the federal government and administered by each state. So the Medicaid rules may vary from state to state.

One of the primary benefits of Medicaid is that, unlike Medicare which only pays for skilled nursing, the Medicaid program will pay for long term custodial care in a nursing home. Custodial care refers to assistance with the activities of daily living (i.e., activities like dressing, bathing, toileting, preparing meals and so on). The inability of some older persons to manage these activities on their own often results in the need to move to a nursing home.

Why Plan for Medicaid?

As life expectancies and long term care costs continue to rise, the challenge quickly becomes how to pay for these services. Many people cannot afford to pay $4,000 per month or more for the cost of a nursing home, and those who can pay for a while may find their life savings wiped out in a matter of months, rather than years.

Fortunately, the Medicaid Program is there to help. In fact, in our lifetime, Medicaid has become the long term care insurance of the middle class. But the eligibility to receive Medicaid benefits requires that you pass certain tests on the amount of income and assets that you have. The reason for Medicaid planning is simple… you plan so that if you need it, you will be eligible to receive Medicaid benefits.

Exempt Assets and Countable Assets: What Can You Keep and What Is at Risk?

To qualify for Medicaid, you must pass some fairly strict tests on the amount of assets you can keep.

To understand how Medicaid works, we first need to review what are known as exempt and non-exempt (or countable) assets.

Exempt assets are those which Medicaid will not take into account (at least for the time being). While the laws in Kansas and Missouri differ, in general, the following are the primary exempt assets:

- The Home, (so long as the equity is no greater than $500,000). The home must be the principal place of residence. The nursing home resident may be required to show some "intent to return home" even if this never actually takes place.
- Household and Personal Belongings such as furniture, appliances, jewelry and clothing.
- One Car
- Burial Plot for you and your spouse.
- Cash Value of Life Insurance policies as long as the face value of all policies added together does not exceed $1,500. If it does exceed $1,500 in total face amount, then the cash value in these policies is countable.
- Cash (e.g., a small checking or savings account) not to exceed $2,000 in Kansas or $999.99 in Missouri.

All other assets which are not exempt (i.e., not listed above) are countable. This includes checking accounts, savings accounts, CDs, money markets, stocks, mutual funds, bonds, IRAs, pensions, 401Ks, 403Bs, second cars and so on (In certain instances retirement plans and IRAs my be exempt). Basically all money and property, and any item that can be valued and turned into cash, is a countable asset unless it is one of those assets listed above as exempt.

While the Medicaid rules themselves are complicated and tricky, for a single person it's safe to say that you will qualify for Medicaid so long as you have only exempt assets plus a small amount of cash (i.e., $2,000 in Kansas and less than $1,000 in Missouri).

Does this mean that if you're single and need Medicaid assistance, you'll have to spend nearly all of your assets to qualify?

No. Actually there are a number of strategies which can be used to protect your estate. For instance, consider the following case study:

Medicaid Planning for Single People

Case Study 1

Sara was a good daughter. For as long as she could remember, she'd been in the role of caregiver. When she was little, and Mom was hospitalized for three and a half weeks, Sara had taken over running the family...even though she was only 13. And that wasn't the only time. But it seemed like Sara had finally escaped that role, until three years ago when Mom had a stroke. Since Mom could no longer care for herself, Sara moved back home and took over Mom's care. And she's been doing it for the past three years, but now it's gotten to the point where Mom needs more care than Sara can give.

Mom owns a $150,000 house and she would like to give the house to Sara as a way of saying thank you for all that Sara has done for her. But when Mom and Sara check around, they're told that if they gift the house to Sara, Mom will be ineligible for Medicaid for years, and it may even be a criminal act!

They come to you in tears. You calmly tell them that there's a provision in the Federal Law (42 U.S.C. § 1396P (c)(2)(a) which is binding in both Kansas and Missouri. The law states that you can

give a home to an adult child who resides in the home for at least two years, if the child provided care which permitted Mom to stay at home rather than in an institution or facility. In other words, if a child moves back home and cares for a parent, and if that child's care has kept the parent out of a nursing home for at least the last two years, then the home may be given to the child without Medicaid penalties.

So how should Sara document her care for Mom? The best thing would be to keep a log or journal that sets forth specific incidents or events that, but for the child's care, might have resulted in Mom's institutionalization. For instance, note things like gas burners not being shut off, water left running in the tub, Mom's wandering or other medically dangerous actions.

In addition, it would be helpful to have statements from other family members or neighbors telling of any events or circumstances that reinforce Sara's position. Finally, it would be most helpful to have a letter from a physician and/or visiting nurse or home health care provider saying that Sara's care did in fact keep Mom out of the nursing home for at least two years. You explain this to Sara and her Mom and they are both delighted that all of Sara's good deeds will not go unrewarded. The house may be given to Sara and Mom can still qualify for Medicaid.

FYI: There are other situations where the home may be transferred without penalty. They include transfers to the following:

- The spouse;
- A minor, blind or disabled child;
- A sibling who has an equity interest in the home and who has resided there for at least one year before the Medicaid applicant became institutionalized.

Division of Assets Medicaid Planning for Married Couples

Division of Assets is the name commonly used for the Spousal Impoverishment provisions of the Medicare Catastrophic Act of 1988. It applies only to couples. The intent of the law was to change the eligibility requirements for Medicaid in situations where one spouse needs nursing home care while the other spouse remains in the community, (i.e., at home). The law, in effect, recognizes that it makes little sense to impoverish both spouses when only one needs to qualify for Medicaid assistance for nursing home care.

As a result of this recognition, division of assets was born. Basically, in a division of assets, the couple gathers all of their countable assets together in a review. The exempt assets which we discussed earlier are not counted.

The countable assets are then divided in two, with the at-home or community spouse allowed to keep one-half of all countable assets up to just over $99,000. The other half of the countable assets must be "spent down" until less than $2,000 remains for Kansas residents and less than $1,000 for Missouri residents. The amount of the countable assets which the at-home spouse gets to keep is called the Community Spouse Resource Allowance (CSRA).

Each state also establishes a monthly income floor for the at-home spouse. This is called the Minimum Monthly Maintenance Needs Allowance. This permits the community spouse to keep a minimum monthly income ranging from about $1,604 to $2,489.

If the community spouse does not have at least $1,604 in income, then he or she is allowed to take the income of the nursing home spouse in an amount large enough to reach the Minimum Monthly Maintenance Needs Allowance (i.e., up to at least $1,604). The nursing home spouse's remaining income goes to the nursing home. This avoids the necessity (hopefully) for the at-home spouse to dip into savings each month, which would result in gradual impoverishment.

To illustrate, let's assume the at-home spouse receives $800 per month in income. Let's also assume that her needs are calculated to be the minimum of $1,604. With her Social Security she is $804 short each month.

$ 1,604	at-home spouse's monthly needs (as determined by formula)
$ -800	at-home spouse's Social Security
$ 804	short fall

In this case, the community spouse will receive $804 (the shortfall amount) per month from the nursing home spouse's Social Security and the rest of the nursing home spouse's income will then go to pay for the cost of his care.

Once again, this does not mean that there are not other planning alternatives which the couple can pursue. Consider the following case studies:

Medicaid Planning for Married People

Case Study 2

Ralph and Alice were high school sweethearts who lived in Kansas City, Missouri their entire adult lives. Two weeks ago Ralph and Alice celebrated their 51st Anniversary. Yesterday Alice, who has Alzheimer's, wandered away from home. Hours later she was found sitting on a street curb, talking incoherently. She was taken to a hospital and treated for dehydration. Ralph comes to see you after their family doctor tells him he needs to place Alice in a nursing home. He tells you they both grew up during the Depression and have always tried to save something each month. Their assets, totaling $100,000, not including their house, are as follows:

Savings account	$15,000
CDs	$45,000
Money Market account	$37,000
Checking account	$ 3,000
Residence (no mortgage)	$80,000

Ralph gets Social Security and Pension checks totaling $1,500 each month; Alice's check is $450. His eyes fill with tears as he says "At $4,000 to the nursing home every month, our entire life savings will be gone in less than 3 years!" What's more, he's concerned he won't be able to pay her monthly nursing home bill because a neighbor told him that the nursing home will be entitled to all of their Social Security checks.

There is good news for Ralph and Alice. It's possible he will get to keep his income and most of their assets… and still have the state Medicaid program pay Alice's nursing home costs. While the process may take a little while, the end result will be worth it.

To apply for Medicaid, he will have to go through the Missouri Family Services Division (FSD). If he does things strictly according to the way FSD tells him, he will only be able to keep about ½ of their assets (or about $50,000) plus he will keep his income.

But the results can actually be much better than the traditional spend-down, which everyone talks about. Ralph might be able to turn the spend down amount of roughly $50,000 into an income stream for him that will increase his income and meet the Medicaid spend down virtually right away. In other words, if handled properly she may be eligible for Medicaid from the first month that she goes into the nursing home.

Please note this will not work in every case. That's why it's so important to have an Elder Law attorney guide you through the system and the Medicaid process to find the strategies that will be most beneficial in your situation. So, he will have to get advice from someone who knows how to navigate the system. But with proper advice he may be able to keep most of what he and Alice have worked so hard for.

This is possible because the law does not intend to impoverish one spouse because the other needs care in a nursing home. This is certainly an example where knowledge of the rules and how to apply them can be used to resolve Ralph and Alice's dilemma.

Of course, proper Medicaid planning differs according to the relevant facts and circumstances of each situation as well as the state law.

Can't I Just Give My Assets Away?

Many people wonder, can't I give my assets away? The answer is, maybe, but only if it's done just right and in a timely manner. The law has severe penalties for people who simply give away their assets to create Medicaid eligibility. In Kansas, for example, every $3,000 given away during the three years prior to a Medicaid application creates a one month period of ineligibility. In Missouri, every $2,852 gift creates the same waiting period. So even though the federal Gift Tax laws allow you to give away up to $13,000 per year without gift tax consequences, those gifts could result in a period of ineligibility for Kansas Medicaid of three months and a four month period of ineligibility in Missouri. In addition, new legislation enacted on February 8, 2006, states that gifts made after that date will be subject to a five year lookback along with other harsh penalties.

Next consider the following case study:

Can Financial Gifts to Children Protect Your Assets from Medicaid?

Case Study 3

After her 73-year-old husband, Harold, suffers a paralyzing stroke, Mildred and her daughter, Joan, need advice. Dark circles have formed under Mildred's eyes. Her hair is disheveled. Joan holds her hand.

"The doctor says Harold needs long-term care in a nursing home," Mildred says. "I have some money in savings, but not enough. I don't want to lose my house and all our hard-earned money. I don't know what to do."

Joan has heard about Medicaid benefits for nursing homes, but doesn't want her mother left destitute in order for Harold to qualify for them. Joan wants to ensure that her father's medical needs are met, but she also wants to preserve Mildred's assets.

"Can't Mom just give her money to me as a gift?" she asks. "Can't she give away $10,000 a year? I could keep the money for her so she doesn't lose it when Dad applies for Medicaid."

Joan has confused general estate and tax laws with the issue of asset transfers and Medicaid eligibility. A "gift" to a child in this case is actually a transfer and Medicaid has very specific rules about transfers.

At the time Harold applies for Medicaid, for gifts made prior to February 8, 2006, the state will "look back" 3 years to see if any gifts have been made. Gifts made after February 8, 2006 will be subject to a five year look back. The state won't let you just give away your money or your property to qualify for Medicaid. Any gifts or transfers for less than fair market value which are uncovered in the look-back period will cause a delay in Harold's eligibility for Medicaid.

In Mississippi, for example, every $4,600 given away during the 3 years prior to a Medicaid

application creates a 30 day period of ineligibility. So if Harold and Mildred give their daughter $10,000, Harold will be ineligible for Mississippi Medicaid for 2 months.
In addition to the changes in the lookback period from three to five years, the new law also states that the penalty period on asset transfers will not begin until the Medicaid applicant is in the nursing home and already spent down. This will frustrate the gifting plans of most people.

So what can Harold and Mildred do? They may be able to institute a gifting program, save a good portion of their estate, and still qualify for Medicaid. But they have to set it up just right. The new rules are very "nit-picky". Generally, if done properly, you can save about one-half of the assets this way. You should consult a knowledgeable advisor on how this may be done.

Will I Lose My Home?

Many people who apply for Medicaid benefits to pay for nursing home costs ask this question. For many, the home constitutes much or most of their life savings. Often it is all the couple has to pass on to their children.
Under Medicaid, the home is an exempt asset (so long as the equity is less than $500,000). This means its value is not taken into account when calculating eligibility for Medicaid benefits. But under a change made in 1993, (Omnibus Budget Reconciliation Act of 1993) states are required to set up an Estate Recovery Unit to seek recovery of all Medicaid payments from the estates of those who receive coverage. Because the home is the single largest asset which a couple can keep, while still qualifying for Medicaid, it is also the main target of estate recovery in most states.

Here's how the process works. While the community spouse (i.e., at home) is living in the home, it remains an exempt asset. But after the deaths of both the community spouse and the nursing home spouse, the Estate Recovery laws allow the state to demand repayment of benefits paid to the nursing home spouse. Under OBRA-93, the states have broad authority to seek payment for Medicaid services rendered from virtually any property owned by the Medicaid recipient.
Fortunately, there are ways to protect your property in Mississippi. The solutions can range from re-titling assets to selling or even gifting them. Since the Medicaid rules are constantly changing, you will need to seek help from an experienced Elder Law attorney to help you in your planning.

In Conclusion

As you can see, there are a number of strategies that you can use to qualify for Medicaid and still preserve some or all of the state you've spent a lifetime building.
These strategies are legal. They are moral. They are ethical. Please be advised, however, that Medicaid planning requires a great deal of knowledge on the ins and outs of the system. This is even more true with the new Medicaid laws enacted on February 8, 2006. Now, more than ever, it's important to work with an experienced advisor who knows the rules and can advise you accordingly.

In the previous pages, we've talked about how to find the right nursing home, how to get good care there, and how to pay for it without going broke. But where do you actually start looking? Where should you begin your search?